

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLUEFIELD REGIONAL MEDICAL CENTER, INC. ¹

Employer

and

Case No. 11-RC-6428

UNITED STEELWORKERS OF AMERICA, DISTRICT 8,
AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a West Virginia corporation with its principal offices located in Bluefield, West Virginia, operates an acute care hospital, from which it receives annual gross revenues in excess of one million dollars. During the past twelve-month period the Employer purchased and received at its Bluefield, West Virginia acute care hospital goods and materials valued in excess of fifty thousand dollars directly from points outside the State of West Virginia.

The Employer provides medical services, including home health care, to residents of Mercer County, McDowell County and Wyoming, County, West Virginia and Tazewell County, Bland County, Russell County, Smyth County and Buchanan County, Virginia. Its main campus address is 500 Cherry Street, Bluefield, West Virginia. Its home health department is located in two building that are in close proximity to the main campus. One such building is located in the State of Virginia and the other is located in the State of West Virginia; neither building is further than nine hundred yards from the main hospital campus. The home health department currently employs sixteen non-supervisory

¹The Employer's name appears as amended at the hearing.

employees who are not permanently assigned to either location. The Employer also maintains a business office clerical department in a building at 210 Bland Street, Bristol, West Virginia, approximately two to three miles from the main hospital campus. This department had formerly been housed at the main hospital campus but was moved to its current address due to space utilization considerations.

The Petitioner seeks to represent both professional and non-professional employees whom it separately listed in voting groups denoted as “group A” and “group B.” Group A is comprised of non-professional employees and group B is comprised of professional employees. The Petitioner further proposes that the election herein be conducted pursuant to *Sonotone*, 90 NLRB 1236 (1950) while the Employer argues that a *Sonotone* election is not appropriate. Nonetheless, the parties generally agree on the scope and composition of the units at issue herein and stipulated that home health care department employees should be included in the units found appropriate herein. The parties further stipulated that employees with the following job titles are professional employees who should be included in voting group B: accountant, application analyst, cardiac rehab coordinator, case manager, case manager hourly, chief clinical dietitian hourly, clinical instructor, clinician I, clinician II, clinician III, CRNA, CRNA hourly, dietician hourly, dosimetrist, educational coordinator lab, graduate nurse, infection control practitioner, medical technologist, micro computer manager/programmer, occupational therapist, ops admissions coordinator, pharmacist, pharmacist hourly, physical therapist, physician recruiter, physical therapist/occupational therapist, quality assurance data analyst RN, registered nurse, RN cardiac cath, RN oncology nurse, RN/rai/care plan coordinator, senior accountant, social worker I, speech therapist, speech-language pathologist exempt, staff chaplain hourly, staff educator and team leader home health. The parties further agree that medical lab technicians are technical employees who should be included in voting group A and that registered nurses who perform relief charge nurse duties should be included within voting group B. However, the parties disagree in that Petitioner maintains that charge nurses are non-supervisory employees who should be included within voting group B herein and that business office clerical employees employed by the Employer at the 210 Bland Street address should be excluded from voting group A herein. The Employer asserts that charge nurses are supervisors who should be excluded from voting group B and that the business office clerical employees stationed at 210 Bland Street should be included within voting group A herein. Both parties have filed briefs that I have carefully considered.

The Employer employs employees who hold the following job titles in its business office clerical department located at 210 Bland Street: biller, collector, refund clerk, cashier, resource coordinator, secretary, reimbursement coordinator and third payer coordinator. The parties stipulated that employees of the Employer employed in the following job titles at its main hospital address are business office clerical employees: accounts payable clerk, registration interviewer, system analyst/programmer, applications analyst, operations technician, transcriptionist (home based), coding clerk, abstracting clerk, secretary, records clearance clerk, clerk evening shift, switchboard operator and records attention clerk. The business office clerical employees who are employed within the Employer’s business office clerical department at Bland Street are governed by the same labor and employment policies, as are the business office clerical employees who work at the main hospital campus. They have the same employee handbook and the same general pay rates. They follow the same personnel policies and procedures and are eligible for the same types of wage increases and promotions. The payroll for all employees is done at the main hospital campus. Moreover, the business office clerical department employees frequently travel to the main hospital campus to obtain documents related to payroll and other documents. All the supplies utilized by the business office clerical department are procured from the main hospital campus. In order to accomplish billing functions, business office clerical employees within the business office clerical department routinely and daily contact business office clerical employees at the main hospital campus to coordinate medical

record requests, late charges, insurance billing questions and other questions regarding billing. The record further demonstrates that two to three employees transfer to the business office department from the main hospital campus or vice versa in any given year utilizing the Employer's job bidding procedure.

The Petitioner in its brief argues that the Employer "has clearly indicated that a separate and distinctive body of employees, performing patient care related office clerical duties, are present at the 500 Cherry Street location . . . [and] has not shown . . . the relative community of interest that would allow the petitioner . . . the ability to properly represent the employees . . . at the Bland Street location." The Petitioner is mistaken in its argument. The Board in rulemaking proceedings, which are reported at 284 NLRB 1515 et seq., set out the appropriate units for acute care hospitals in Section 103.30 of the rule. In accord with the rule, a unit comprised of "all business office clerical employees" is an appropriate unit that can stand alone or be consolidated with one or more of the other appropriate units enumerated in the rule. In its petition herein, the Petitioner seeks a unit of business office clerical employees, and as noted above, it stipulated that certain specific employees at the hospital's main campus at 500 Cherry Street are the "business office clerical employees" whom it seeks to represent. Further, in its Healthcare rulemaking, the Board took particular note of the fact that business office clerical employees perform specific distinct functions related to finances and billing and dealing with Medicare and Medicaid and other insurance related reimbursement systems. The Board specifically noted that business office clericals are generally supervised separately in business office clerical departments and have little interaction with other non-professionals because business office clerical offices are often physically isolated. *See Rhode Island Hospital*, 313 NLRB 343, 359 (1993). Based on the above, and the record as a whole, I shall include the business office clerical employees employed at the Employer's Bland Street location in voting group A found appropriate herein.

The record herein conclusively indicates that the charge nurses at issue herein are supervisors as defined in Section 2(11) of the Act. They make patient assignments to varying degrees. The record demonstrates that they all have the authority to issue written discipline to the employees whom they supervise, although they exercise that authority in varying degrees. They also participate in the hiring process in varying degrees; one charge nurse solely conducts employment interviews and has effectively recommended employees for hire while other charge nurses did not even attend employment interviews. However, all the charge nurses use independent judgement and exercise unfettered discretion in preparing employee performance appraisals of their subordinate employees, which performance appraisals are inextricably linked to the subject employee's annual wage increase. The performance appraisals contain eleven areas for subjective review. The charge nurses at issue herein assign a point value from 1-5, one being the least satisfactory, in each of these categories. Thereafter, each individual department head adds objective attendance data to the evaluation form and adds the subjective points that the charge nurses have awarded to attendance points to arrive at a total figure. Evaluated employees are awarded wage increases ranging from 0% to 4% based upon the range of their numerical score. The Employer's department heads testified that they never changed or amended the scores provided by their respective charge nurses. The record suggests that some charge nurses use a pencil in preparing the performance evaluations. Petitioner accordingly argues that the evaluations they prepare can be modified or changed. However, the record conclusively demonstrates that all department heads testified that they had never changed an employee evaluation and the charge nurses who testified could not, and would not, testify that any evaluation that she had prepared had been changed. Based on the above, and the record as a whole, I find charge nurses to be supervisors and accordingly shall exclude them from the units found appropriate herein. *See Hillhaven Kona Healthcare Center*, 323 NLRB 1171 (1997)

The Employer asserts that the petition herein is inappropriate because it “sets forth two groups (“A” and “B”) which purport to constitute two separate bargaining units,” and further argues that a *Sonotone* election would be inappropriate under the petition as filed or amended. I find that the Employer’s argument is without merit. The Petitioner by seeking a *Sonotone* election has clearly indicated a desire to represent both professional and non-professional employees within a single unit, if appropriate. Section 9(b)(1) of the Act prohibits the inclusion of professional employees in a unit with employees who are non-professional, unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, in conducting the election herein, I direct that the election be conducted in accord with the decision in *Sonotone Corp.*, 90 NLRB 1236 (1950) *See Yukon Kuskokwim Health Corp.*, 328 NLRB No. 101 (1999). Thus, I shall order separate elections among groups of professional and non-professional employees. The employees in the professional voting group “B” will be asked two questions on their ballots:

- 1) Do you desire to be included in the same unit as technical employees, skilled maintenance employees, business office clerical employees and all other non-professional employed by the Employer at its Bluefield, Virginia and Bluefield, West Virginia, facilities, for the purposes of collective bargaining?
- 2) Do you desire to be represented for the purposes of collective bargaining by the United Steelworkers of America, District 8, AFL-CIO, CLC?

If a majority of the professional employees in voting group B vote yes to the first question, indicating a desire to be included in a unit with non-professionals employees, they will be so included. Their votes on the second question will then be counted with the votes of the non-professional employees voting in group A to decide the representative for the entire combined bargaining unit of professionals and non-professionals. The following employees would then constitute a unit appropriate for collective bargaining:

All full-time and regular part-time technical employees, skilled maintenance employees, business office clerical employees, registered nurses, relief charge nurses and all other professional and non-professional employees employed by the Employer at its Bluefield, Virginia and Bluefield, West Virginia, facilities; excluding physicians, the chief certified nurse of anesthesia, and charge nurses in the following departments: emergency department, unit 4 south, skilled nursing unit; unit 3 west, intensive care unit, coronary care unit, unit 3 south telemetry, unit 3 east, and outpatient surgery, and guards and other supervisors as defined in the Act.

If, on the other hand, a majority of the professional employees in voting group B do not vote for inclusion, they will not be included with the non-professional employees and their votes on the second question will be separately counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit and the following two groups of employees will constitute separate units appropriate for collective bargaining:

All full-time and regular part-time technical employees, skilled maintenance employees, business office clerical employees and all other non-professional employees employed by the Employer at its Bluefield, Virginia and Bluefield, West Virginia, facilities; excluding physicians, registered nurses, all

other professional employees, guards and supervisors as defined in the Act.

All full-time and regular part-time registered nurses, relief charge nurses and all other professional employees employed by the Employer at its Bluefield, Virginia and Bluefield, West Virginia, facilities, excluding technical employees, skilled maintenance employees, business office clerical employees, all other non-professional employees, physicians, the chief certified nurse of anesthesia, and charge nurses in the following departments: emergency department, unit 4 south, skilled nursing unit; unit 3 west, intensive care unit, coronary care unit, unit 3 south telemetry, unit 3 east, and outpatient surgery, and guards and all other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

UNITED STEELWORKERS OF AMERICA, DISTRICT 8, AFL-CIO, CLC

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **January 12, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list

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may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 12, 2001**.

Dated December 29, 2000

at Winston-Salem, North Carolina

Acting Regional Director, Region 11

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